ALTS
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

July 26, 2001

VIA ELECTRONIC FILING

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington D.C. 20554

Re: In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Attwood:

As you know, the competitive local exchange carriers ("CLECs") have encountered numerous problems in attempting to convert special access facilities into Enhanced Extended Links ("EELs"). Despite the Commission's efforts to expedite this conversion in a manner that respects the rights of incumbents and their competitors, successful conversions have been rare even though the Commission's order took effect on February 17, 2000.

We understand the Bureau has drafted a forbearance order that attempts to remedy one of the perceived causes of this problem – "end-to-end co-mingling" (discussed below). We very much appreciate this effort, but, based on our current understanding of the draft, we believe the forbearance order does not address the more pressing "facility co-mingling" issue, which the ILECs have improperly read into the the FCC's rules and relied upon to deny CLEC EEL conversions. We believe that the FCC should either resolve the "facility co-mingling" issue (discussed below) or otherwise not adopt a forbearance order limited to the "end-to-end co-mingling" issue. Rather, the "end-to-end co-mingling issue" should be made part of a larger order that would deal comprehensively with the EEL problem. Our reasons for urging this are as follows:

1. The so-called "co-mingling" prohibition -- The term "co-mingling" has been used in this proceeding to describe at least three distinct situations. In the first, a tariffed access service is connected to an EEL (or a special access service that a CLEC wishes to convert to an EEL). We refer to this as "end-to-end co-mingling." A second use of "co-mingling" refers to where an EEL (or a special access service which a CLEC wishes to convert to an EEL) either rides upon or resides next to a tariffed access facility. We refer to this as "facility co-mingling." The third use refers to the inclusion of both local and

interexchange traffic within the same end-to-end channel. We call this "channel co-mingling."

The CLEC community does not believe that any ILEC revenue erosion that may be accelerated by these forms of co-mingling poses valid legal or policy concerns for the Commission, particularly since adoption of the CALLS order. In order to expedite the conversion process, four CLECs submitted an ex parte to the Commission in early 2000 placing temporary limits on the extent of "channel co-mingling." The ILECs, however, have not been content with just this concession from the CLECs. They have since relied upon the two other forms of co-mingling -- principally facilities co-mingling -- to stonewall the conversion process.

The draft item apparently only addresses the “end-to-end co-mingling” issue -- an issue which we do not believe to be nearly so significant as the ILECs' reliance upon an asserted “facility co-mingling” prohibition. Furthermore, it was the CLECs' understanding that the “channel co-mingling” restrictions agreed to in the ex parte would be strictly transitional, and would have expired by now. Accordingly, we believe it would make more sense for the Commission to address all three forms of co-mingling comprehensively in a single order. In the event that the FCC is inclined to adopt an interim order, such an order should clarify that a prohibition on “facility co-mingling” was not intended by adoption of the limited prohibitions on “channel co-mingling” designed to ensure compliance with the three local use restriction tests. The ILECs must not be allowed to rely on any limited prohibition on “channel co-mingling” as a means to preclude “facility co-mingling,” which preclusion would do nothing to ensure adherence with the local use restrictions. A prohibition on “facility co-mingling” does nothing to remedy the limited policy objective for which the FCC reluctantly agreed to adopt temporary use restrictions on EELs – ensuring that ILECs would not experience immediate rate shock due to loss of IXC special access revenue. The local use restrictions and any “channel co-mingling” restrictions set forth in the local use restriction tests were never intended to preclude CLECs from obtaining EELs that satisfy the local use restrictions.

2. Forbearance -- We understand the draft item relies on the Commission's forbearance powers in order to take action on end-to-end co-mingling. We respectfully but urgently request that this theory be abandoned. Assuming the specific requirements for forbearance were satisfied (and we take no position that they are), forbearance would only be appropriate to lift regulatory requirements that have been properly applied. Because the competitive industry does not believe the end-to-end co-mingling requirement even exists -- far less, that it was properly considered and issued as a rule by the Commission -- taking action under forbearance amounts to a regulatory ratification of unilateral anti-competitive action by the incumbents.

3. Separate network facilities for UNEs and special access -- Beyond the fact the draft item addresses only one minor aspect of the co-mingling dispute, it also ignores a fundamental and anti-competitive position adopted by the incumbents to frustrate EEL conversions: the claim they are entitled to provision UNEs in general (as well as combinations of UNES, such as EELs) using facilities, inventories, and ordering systems that are physically and logically distinct from the facilities, inventories, and

ordering systems used to provision identical access services. What this means is that even though an EEL conversion is nothing but a billing change, various ILECs insist on implementing a conversion request by taking much more drastic action, action that more resembles a "hot cut", and which thereby endangers customer service.

The theory that ILECs have the right to operate separate networks for UNEs is profoundly illegal and antidiscriminatory. The Commission needs to plainly reject this contention in a comprehensive EELs order rather than consume time on piecemeal approaches.

4. The ILECs have insisted upon unjustifiably dangerous EEL conversion processes -- As noted above, an EEL conversion was supposed to be no more demanding than a simple billing change. However, several ILECs have turned EELs conversions into a game of Russian roulette, with the gun barrel pointing at the head of the CLEC customer. For example, Ameritech insisted upon using an conversion system with a substantial risk of downstream disconnections. After pressure from Focal and e.spire, Ameritech subsequently implemented a system that appeared (incorrectly) to be less risky. When this new system was used by NuVox, however, it disconnected end users at a rate so alarming that Ameritech advised Focal not to risk using it.

The ILECs' insistence upon gratuitously harming CLEC customers would be outrageous by itself. But they have added economic insult to customer injury by insisting that they will not implement the reduced EEL rate until a CLEC's conversion order has run this provisioning gauntlet. No ILEC has offered any reason why the economic effect of a valid CLEC EEL conversion must await the ILEC's creation of a safe ordering system. Indeed, none of the ILECs filed petitions seeking a delay in the effective date of the EEL Conversion Order in order to implement new systems, nor did they seek clarification that they were entitled to impose unnecessary and customer-hostile provisioning burdens as part of the EELs conversion process. They choose to do this unilaterally.

Based on the above facts, the draft item would not remedy the problem in any meaningful way. The competitive industry respectfully requests that the FCC resolve the "facility co-mingling" issue in an interim clarification order and resolve the remaining issues in a comprehensive EEL order.

Yours truly,

/s/

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